

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

**FILED**  
U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF N C  
MAY 22 1996

J. BARON GROSHON

BY: DL  
Deputy Clerk

In Re:

Kolortex Corporation

Tax I.D. #56-1171817

Debtor(s)

Case No.: 95-30796

Chapter: 7

ORDER

JUDGEMENT ENTERED ON MAY 22 1996

This matter is before the Court upon the Bankruptcy Administrator and the Trustee's objection to the Application for Attorneys' Fees and Expenses by Rayburn, Moon & Smith, P.A. filed on March 22, 1996 for the period December 1, 1995 through February 29, 1996.

**FACTUAL AND PROCEDURAL HISTORY**

Rayburn, Moon & Smith ("Rayburn") represented the Debtor in a voluntary bankruptcy proceeding which was filed under Chapter 11 of the United States Bankruptcy Code. On September 15, 1995, this case was converted to a proceeding under Chapter 7 of the Bankruptcy Code. Thereafter, on March 22, 1996, Rayburn filed an application for attorneys' fees and expenses for the post-conversion period of December 1, 1995 through February 29, 1996 in the amount of \$4,273.51 (the "Application"). The Bankruptcy Administrator and the Trustee objected to the Application. The Bankruptcy Administrator and Rayburn both filed Memoranda in support of their positions. The Court held a hearing on the matter on May 21, 1996.

## ANALYSIS

The Bankruptcy Administrator argues that due to the changes made in 11 U.S.C. §330(a) by the Bankruptcy Reform Act of 1994, a debtor's attorney is not entitled to compensation after the appointment of a trustee. The Court agrees.

Subsection (a) of 11 U.S.C. §330 underwent substantial revisions as part of the Bankruptcy Reform Act of 1994, Pub.L. 103-394 (October 22, 1994). Significant to this case is the deletion of the phrase "or to a debtor's attorney."<sup>1</sup> Section 330(a) permits compensation only to "a trustee, an examiner, or professional person employed under section 327 or 1103," 11 U.S.C. §330(a)(1996), or to a debtor's attorney under Chapter 12 or Chapter 13. 11 U.S.C. §330(a)(4)(B). This does not mean that compensation is prohibited for all debtor's attorneys. Clearly, a debtor-in-possession's attorney employed pursuant to 11 U.S.C. §327 is permitted compensation under §330. Section 327 allows the trustee to employ professionals and the debtor-in-possession has this right to employ by virtue of 11 U.S.C. §1107(a)(1996). The debtor ceases as a debtor-in-possession at the time a Chapter 11 trustee is appointed or when the case is converted to a Chapter 7 proceeding and a Chapter 7 trustee is appointed. 11 U.S.C. §1101(1)(1996).

---

<sup>1</sup>The prior version of 11 U.S.C. §330(a) reads as follows:

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to a debtor's attorney--

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such service, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses. 11 U.S.C. §330(a) (1994) (emphasis added).

Although there is no legislative history concerning the deletion of the phrase “or to the debtor’s attorney” from §330(a), the Court must look to the plain meaning of the language of the statute unless this interpretation produces an absurd result or an internal inconsistency. See, United States v. Turkette, 452 U.S. 576, 580 (1981). The plain meaning of the deletion of the words, “or the debtor’s attorney,” is that Congress intended to remove the statutory basis for compensation to any debtor’s attorney not falling within the remaining provisions. It is noteworthy that Congress added a subsection to 11 U.S.C. §330 which specifically provides for compensation to debtor’s attorneys in Chapter 12 and Chapter 13 cases. This Court agrees with the reasoning of the court in In re Kinnemore, and believes the correct statutory construction is that the “‘expression of one is the exclusion of the other’--the failure of Congress to include a reference to Chapter 7 debtor’s counsel fees in subsection (a)(4)(B) must be interpreted to mean the legislature intended to exclude such attorneys from compensation from the bankruptcy estate.” In re Kinnemore, 181 B.R. 520, 521 (Bankr. D. Idaho 1995).

As to the internal inconsistency argument, Rayburn argues that because the phrase “debtor’s attorney” was left in 11 U.S.C. §331 which allows for interim compensation, it was clearly Congressional error to delete the phrase from §330(a). This argument fails in that there are debtor’s attorneys who are entitled to compensation under §330 and therefore are permitted to apply for interim compensation under §331. Moreover, §331 does not change the clear meaning of §330 since interim compensation under §331 is only allowed if the requirements of §330 are met. 11 U.S.C. §331 (1996).

Regarding the argument that it is absurd to believe that Congress intended to deny compensation from the estate to Chapter 7 debtor's attorneys, the Court is unpersuaded by this argument. When a trustee is appointed in a Chapter 7 or Chapter 11 case, the trustee is the entity who acts in the interest of the estate. Simple logic suggests that, once a trustee is appointed, a debtor's attorney should not be allowed to continue to accrue bills for services to be paid from assets of the estate which would otherwise be available for distribution to creditors. Following the appointment of a trustee, the debtor generally has few, if any duties. Those now reside with the trustee except where he employs others to participate. To the extent the trustee did require services of the debtor's attorney, the trustee could file an application to hire the debtor's attorney as special counsel under 11 U.S.C. §327(e) (1996). To allow compensation to debtor's counsel from the estate under these circumstances, to some extent, undermines the trustee's ability to control the estate and act in the best interests of the estate. Furthermore, since the trustee does not control the debtor's attorney under this scenario, it leaves the door wide open for a significant occurrence of duplicative services.

Rayburn's other arguments also miss the mark. Rayburn argues that this Court should make a distinction between individual Chapter 7 debtors and corporate Chapter 7 debtors as far as the interpretation of the statute. The Court can find no basis in the law or the rules of statutory construction to make this distinction. Finally, Rayburn argues that because Senators Grassley and Heflin have introduced a bill which would restore the phrase, "or to the debtor's attorney," to §330(a), the Court should conclusively rule that Congress' deletion of the phrase in the Bankruptcy Reform Act of

1994 was an error. The Court is not inclined to interpret the statute outside of its plain meaning based on the introduction of a bill into the legislative process. Even if the bill were passed by Congress in the same form as introduced, the changes would apply only to cases filed on or after March 22, 1996, thus being inapplicable to this case.

**IT IS THEREFORE ORDERED** that the objection filed by the Bankruptcy Administrator and the Trustee is **SUSTAINED**, and that the Application for Attorneys' Fees and Expenses by Rayburn, Moon & Smith, P.A. for the period December 1, 1995 through February 29, 1996 is **DENIED**.

This the 21<sup>st</sup> day of May, 1996

A handwritten signature in black ink, appearing to read 'Marvin R. Wooten', written over a horizontal line.

Marvin R. Wooten  
United States Bankruptcy Judge